

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 286 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
MOHANBHAI DEVCHANDBHAI PATEL

Versus

STATE OF GUJARAT

-----  
Appearance:

M/S THAKKAR ASSOC. for Petitioners

GOVERNMENT PLEADER for Respondent No. 1

-----  
CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 15/12/97

ORAL JUDGEMENT

By way of this petition under Articles 226 & 227 of the Constitution of India, petitioners have challenged the order dated 31.8.1995 passed by the competent authority, Annexure-A, cancelling the scheme sanctioned under section 21(1) of the Urban Land (Ceiling & Regulations) Act, 1976 (hereinafter referred to as "the Act").

The petitioners are the original owners of survey no.45 and 51 (Block No. 73 and 79 ) situate at village Nana Varachha, Tal. Choryasi, Dist. Surat, admeasuring 52913 sq.mts., filed declaration before the competent authority that the land is to be utilised for the construction of dwelling unit for the accommodation of the weaker section of the society in accordance with the proposed scheme to be approved by the competent authority. The competent authority vide its order dated 26.5.1992 sanctioned the scheme as proposed upon the usual conditions. It is the case of the petitioners that they have obtained NA Permission and the construction permission from the concerned authority. According to the petitioners, they have complied with each and every conditions as stipulated in the order sanctioning the scheme and, have started construction of the residential houses for the benefits of the weaker sections of the society. The competent authority and Addl. Collector-respondent no. 2 herein, by his order dated 31.8.1995 passed against the petitioners on the ground that the petitioners have committed a breach of conditions nos. 1,4,5,8,9,19 and 22 and, therefore, cancelled the scheme for the construction of the houses for weaker section of the society vide its order dated 26.5.1992 and also declared survey no. 40 and 51 (Block no. 73 & 79) as the vacant land and to proceed further against the petitioner in accordance with law. As stated above, the said order is under challenge.

It is the grievance of the petitioners that the impugned order is against the principle of natural justice inasmuch as the petitioners are not heard before passing of the impugned order and, therefore, the impugned order is against the principle of natural justice. It is also the grievance of the petitioners that the respondent no. 2 has not supplied certain documents to the petitioners on which the reliance has been placed.

Reading the impugned order, it appears that the authority before passing the impugned order has issued notice dated 26.8.1995 which was tried to be served by hand delivery through Surveyor, however the wife of the petitioner has refused to accept the same on the ground that the petitioner is not present. Technically, the authority is right inasmuch as the refusal of notice amounts to be accepted by the party. However, in view of the peculiar facts and circumstances of the case, inasmuch as the petitioners immediately after the scheme was sanctioned has started construction and has made investment of large amount and in view of the fact that the authority themselves have issued notice after more

than three years from the date of the sanction of the scheme, and in the meantime, the petitioner has started construction and if the impugned order is allowed to stand, the petitioners are likely to suffer. In any case, by this time, the alleged objections raised by the respondent may not even survive. Mr. Pahwa, learned advocate has submitted before this Court that the petitioners had in fact, complied with the directions given in the scheme. Whether the petitioners have complied with the directions or not is a question of fact and the same is required to be enquired into by the Competent Authority. In view of this, I am of the opinion that ends of justice shall be met, if the matter is remanded back to the respondent no. 2- Competent Authority and Addl. Collector, Surat to hear the matter afresh and pass the order in accordance with law after hearing the petitioners. The respondent shall ask the petitioners to remain present before him and pass appropriate order within 4 weeks from the date of the receipt of the notice. The petitioners shall produce necessary materials before the authority to substantiate their say in the matter.

In the result, this petition is allowed. The impugned order dated 31.8.1995 Annexure-A is quashed and set aside, and the matter is remanded back to the respondent no. 2 to decide afresh in accordance with law as per the directions given above. Rule made absolute with no order as to costs.

\*\*\*\*\*